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SUPREME COURT, U.S.
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No. _____

In the
Supreme Court of the United States
October Term, 1988

James VanderWeyst, et al.,
Petitioners,
vs.
First State Bank of Benson,
Respondent.

Patrick J. Walsh, et al.,
Petitioners,
vs.
State Bank of Pennock,
Respondent.

Charles Heimark, Jr.,
Petitioner,
vs.
Norwest Bank Montevideo,
Respondent.

Joseph J. Bandas, et al.,
Petitioners,
vs.
Citizens State Bank of Silver Lake, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES FROM DECISION OF THE MINNESOTA SUPREME COURT

30 pp

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I. QUESTION PRESENTED FOR REVIEW

Whether the Depository Institution Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161 extended the most favored lender doctrine to state chartered federally insured depository institutions.

Whether the language of section 521 of the Depository Institution Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161 imposes conditions precedent to its application and, if so, whether Respondent banks have satisfied those conditions.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

II. OPINION BELOW

The Supreme Court of the State of Minnesota filed its Decision on June 3, 1988. A copy of that Decision can be found in the Appendix at A-1.

The Order denying rehearing was issued July 5, 1988. A copy of that Order can be found in the Appendix at A-19.

III. GROUNDS UPON WHICH JURISDICTION IS INVOKED

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3) and Rule 17(1)(b) and (c) of the Rules of the Supreme Court of the United States. This Petition is timely filed within the 90-day period provided in 28 U.S.C. § 2101(c) and Rule 20.4 of the Rules of the Supreme Court of the United States.

IV. FEDERAL STATUTES INVOLVED

The questions presented in this Petition for Writ of Certiorari involve the following:

1. Depository Institution Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161 (*see* App. at p. 21).

2. 12 U.S.C. § 85.

   Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on 90-day commercial paper in effect at the

Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this title. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge at a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on 90-day commercial paper in effect that the Federal Reserve bank in the Federal Reserve district where the bank is located, whichever may be greater, and such interest may be taken in advance, reckoning the days for which the note, bill or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the states of the United States and the District of Columbia shall be at the rate allowed by the laws of the county, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount or sale of a bona fide bill of exchange, payable at another place than the place of such purchase, discount, or sale, at not more than the current rate of exchange for site-drafts, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

3. 12 U.S.C. § 86a (1980).

(a) Discount rate on ninety-day commercial paper

If the applicable rate prescribed in this section exceeds the rate a person would be permitted to charge in the absence of this section, such person may in the case of a business or agricultural loan in the amount of $1,000.00 or more, not-

withstanding any state constitution or statute which is hereby pre-empted for the purpose of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum towards in excess of the discount rate, including any surcharge thereon, on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where by the person is located.

(b) [Omitted]

(c) Forfeiture of Excessive Interest; Recovery

If the rate prescribed in section (a) exceeds the rate such person would be permitted to charge in the absence of this section, and such state imposed rate is thereby pre-empted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate than is allowed by subsection (a), when knowingly done, shall be deemed to be a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the person taking, receiving, reserving, or charging such interest.

4. 18 U.S.C. § 1962(c)

It shall be unlawful for any person employed by or associated with any interprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises affairs through a pattern of racketeering activity or collection of unlawful debt.

V. STATEMENT OF THE CASE

The Petitioners are farmers who claim that the Respondents violated a state usury law, Minn. Stat. § 334.011 (1984), by charging interest rates on agricultural loans in excess of 4½ percent over the federal discount rate. The Respondents claim that the Depository Institution Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 161, (hereinafter "DIDMCA"), excuses Respondents from compliance with the Minnesota usury law governing agricultrual loans. It is claimed by Respondents that this federal legislation extended what has become known as the "Most Favored Lender" Doctrine (hereinafter "MFLD") to state chartered federally insured depository institutions. Petitioners contend that Congress did not explicitly or implicitly incorporate that doctrine when pre-empting state usury laws in the 1980 DIDMCA legislation. Further, Petitioners contend that even if that doctrine was extended by DIDMCA the Respondents have not satisfied the condition precedent to the application of that legislation.

In the instant cases summary judgment motions were made. The Respondents argued that the MFLD was extended to them by virtue of DIDMCA.

In *Bandas v. Citizens State Bank of Silver Lake,* two additional issues are raised. First, involves the loan of November 30, 1984 in the amount of $36,000.00. The annual percentage rate charged was 51.52 per centum. Petitioner alleged a violation of 18 U.S.C. § 1962(c). Respondent Citizen State Bank of Silver Lake claimed that only 14.5 per centum was charged on that particular note and that the rest of the charge constitutes fees for services rendered. The Minnesota Supreme Court remanded the case for resolution of this factual dispute.

Second, the original note in *Bandas,* Note #66603 for $31,700.00, issued January 10, 1983, is governed by 12 U.S.C. § 86(a) (1980). Respondent claims that this note is not governed by that law.

VI. ARGUMENT FOR GRANTING THIS WRIT

1. The Minnesota Supreme Court Has Interpreted Section 521 Of DIDMCA In A Way That Conflicts With The Eighth Circuit Court Of Appeals.

The Minnesota Supreme Court has decided a federal question in a way that conflicts with *In Re: Lawson Square, Inc.*, 816 F.2d 1236 (8th Cir. 1987). The instant cases call for the interpretation of section 521 of DIDMCA. The Eighth Circuit Court of Appeals was called upon, in *Lawson Square*, to interpret section 522 of that Act. The language of sections 521 and 522 are identical. The difference lies in the fact that each applies to a different entity. Section 521 applies to federally insured state banks while section 522 applies to federally insured savings and loan associations. The Eighth Circuit found that there was a condition precedent to the application of section 522. The court held that the applicable rate allowed by section 522, *i.e.*, 1 per centum over the federal discount rate in effect at the time, must first exceed the permitted rate allowed by state law before section 522 could apply.

The Minnesota Supreme Court has interpreted that identical language to require no condition precedent before the section 521 applied. The Minnesota Supreme Court held that section 521 was applicable regardless of the amount of the permitted rate.

The case of *Gavey Properties v. First Financial Savings & Loan Ass'n.*, 845 F.2d 519 (5th Cir. 1988) interpreted this same language. That court held that there was an alternate "triggering" device. The applicable rate could be either 1% over the federal discount rate or the rate where the bank is located. Because the lender, in that case, was located in Illinois, which had no limit on interest rates to be charged on that particular class of loan, the court held that the "applicable" rate, i.e., no limit, was greater than the "permitted" rate in Texas, situs of the transaction and property, therefore the section was applicable. Insofar as the *Gavey* court found an alternate triggering device, the court felt that *Lawson Square* was distinguishable.

2. The Minnesota Supreme Court Has Applied Section 521 Of DIDMCA In A Way That Conflicts With Decisions Of This Court.

The Minnesota Supreme Court has applied Section 521 of DIDMCA in a way that conflicts with this Court's decision in *Marquette National Bank of Mpls. v. First Omaha Service Corp.*, 439 U.S. 299 (1978) and *Tiffany v. National Bank of Missouri*, 85 U.S. (18 WALL) 409 (1873). The Minnesota Supreme Court has held that the MFLD was extended to state chartered federally insured banks with the passage of DIDMCA. The Minnesota Supreme Court determined that the allowance clause of the National Bank Act, 12 U.S.C. § 85, was in pertinent part, incorporated into DIDMCA and that it was this allowance clause that gave rise to the MFLD. Therefore, the MFLD, the court reasoned, must then be extended to state banks.

In Marquette, (439 U.S. 299, 308, n.19) this Court reiterated the enabling effect of the except clause as it had been interpreted in *Tiffany*. The MFLD has its basis in the enabling effect of the except clause. The language of the except clause was **not** incorporated into the DIDMCA legislation.

The Minnesota Supreme Court held that the basis for the MFLD is the allowance clause rendering the except clause as "not needed". This represents a conflict between this Court's decision in *Tiffany* and *Marquette* and the Minnesota Supreme Court decision in the instant cases.

3. The Minnesota Supreme Court Has Decided An Important Question Of Federal Law Which Has Not Been But Should Be Settled By This Court.

The Minnesota Supreme Court has decided that the DIDMCA legislation extended the MFLD to federally insured state banks. This Court, in *Marquette, supra,* recognized that 12 U.S.C. § 85 was comprised of two clauses, the allowance clause and the except clause. The allowance clause was determined to extend to lenders the ability to export interest rates across state lines. It was the language of this allowance clause that was incorporated into sec-

tion 521.

This Court in *Tiffany*, (85 U.S. 409, 413) and as interpreted by the comptroller of currency in 1948, held that the MFLD is based upon the except clause. (See illustration in App. page 34.) The except clause was **not** incorporated into DIDMCA. The Minnestoa Supreme Court has held that the MFLD is based upon the allowance clause and not upon the except clause. This is an important question inasmuch as it has direct impact upon the farming community and the banking community on a national level. The gross uncertainty and juxtaposition of the various courts, legislatures and Congress as to this issue require a final resolution of this very complicated issue.

VII. CONCLUSION

This Court is respectfully requested to accept this Petition for Review. Hard times have hit both the out-state banking community and the farmers alike. A decision in this case will help settle and put to rest suspicions and discussions concerning the fairness of the relationship between these two communties.

Respectfully submitted,

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Nos. C4-87-283, C5-87-339, C6-87-379, C7-87-1184

State of Minnesota

In Supreme Court

James VanderWeyst, et al., petitioners,
Appellants,

vs. (C4-87-283)

First State Bank of Benson,
Respondent.

Patrick J. Walsh, et al., petitioners,
Appellants,

vs. (C5-87-339)

State Bank of Pennock,
Respondent.

Charles Heimark, Jr., petitioner,
Appellant,

vs.

Norwest Bank Montevideo,
Respondent.

Joseph J. Bandas, et al., petitioners,
Appellants,

vs.

Citizens State Bank of Silver Lake, et al., petitioners,
Respondents.

Simonett, J.
Dissenting in part, Wahl, J.
Took no part, Popovich, J.

Filed June 3, 1988
Office of Appellate Courts

SYLLABUS

1. The federal 1980 Deregulation Act gives federally insured state banks "most favored lender" status.

2. Respondent state banks, having most favored lender status, may charge up to 21.75 percent a year on their agricultural loans made between 1983 and 1985, and need not comply with the loan ceiling, loan splitting, and attorney fee provisions of Minn. Stat. chapter 56.

3. The *Bandas* case is remanded to determine whether, in fact, the "origination fee" charged constitutes interest, and a separate RICO issue is left undecided.

Affirmed in all four cases, except, in *Bandas,* the case is remanded for further proceedings as indicate.

Heard considered, and decided by the court en banc.

OPINION

The issues in these four appeals are whether federally-insured, state-chartered banks have preemptive most favored lender status under federal law, and, if so, whether under state law their agricultural loans charged a permissible interest rate and were otherwise lawful. We answer these issues, for the most part, yes, but remand in one case on a particular fact issue.

Minn. Stat. § 334.011 (1986) regulates the interest rate chargeable on agricultural loans under $100,000 and states any lender may charge not more tha 4½ percent in excess of the applicable federal discount rate. In each instance involved here, the bank charged more. The bands contend, however, that Minnesota law, when read in light of federal legislation regulating interest rates for state-chartered, federally-insured banks, authorized them to charge interest at a rate up to 21.75 percent on agricultural loans. All the loans were made between 1983 and 1985, and, with the possible exception of one loan to appellant Joseph Bandas, all the loans were financed at an interest rate lower than 21.75 percent (in a range from 11.85 percent to 16 percent).

The banks say they may charge the higher rate because they have "most favored lender" status under 1980 federal legislation entitled the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 132. 161 (codified in scattered sections of 12 and 15 U.S.C.) (hereafter the Deregulation Act). They claim that the most favored lender doctrine authorizes them to charge the highest interest rate allowed under Minnesota law to any lender empowered to make agricultural loans. They argue that state law authorizes industrial loan and thrift companies to make agricultural loans at an interest rate up to 21.75 percent per annum and, therefore, that they may do the same.

Plaintiff-appellant borrowers contest the banks' position each step of the way. They deny the Deregulation Act gives the banks most favored lender status. They deny that state law allows industrial loan and thrift companies to charge 21.75 percent on agricultural loans. Finally, even if the banks could use the 21.75 percent rate, plaintiffs claim the banks failed to comply with other material provisions regulating loans made by industrial loan and thrift companies. In short, plaintiffs claim the bank loans are in violation of Minnesota's usury laws. In addition, in one case it is claimed that the bank charged 51.52 percent interest on a particular loan in violation of the Racketeer Influenced and Corrupt Organization Act (RICO).

In *First Bank East v. Bobeldyk,* 391 N.W.2d 17 (Minn. App. 1986), the court of appeals held that the Deregulation Act extended most favored lender status to federally-insured state banks. We denied the borrower's petition for further review in that case. Since then, the issue has continued to fester in cases before the court of appeals and it appears this is matter of statewide importance that should be considered by this court.[1] Consequently, we have granted the borrowers' petitions for further review in the cases now before us, all of which have followed *Bobeldyk,* namely, *VanderWeyst v. First State Bank of Benson,* 408 N.W.2d 208

[1] Apparently no appellate courts of other states have dealt with the question. In *Attorney General of Maryland v. Equitable Trust Co.,* 294 Md. 385, 390-91, 450 A.2d 1273, 1278 (1982), the trial court held that the Deregulation Act extended most favored lender status to state-insured banks, but this ruling was not challenged on appeal.

(Minn. App. 1987) (wherein we also granted oral argument); *Walsh v. First State Bank of Pennock* (and *Heimark v. Norwest Bank Montevideo*), 409 N.W.2d 5 (Minn. App. 1987), and *Bandas v. Citizens State Bank of Silver Lake,* 412 N.W.2d 818 (Minn. App. 1987). We now consolidate these cases on appeal, and this opinion covers all four cases.

Specifically, the appellate court in these appeals has held: That the Deregualtion Act permits extension of the most favored lender doctrine to insured state banks; that under this doctrine the banks may charge interest on their agricultural loans at the rate allowed industrial loan and thrift companies; and that banks, to qualify for most favored lender status, need not adhere to the licensing, lending, and loan splitting and ceiling provisions required for industrial loan and thrifts. Finally, in *Bandas,* while the court ruled that one of the loans was made at a usurious rate, it further held that this did not constitute a RICO violation. Each of these holdings is put at issue in these appeals.

I.

We hold the Deregulation Act gives respondent banks "most favored lender" status. 12 U.S.C. § 1831d(a) (1982) of the Act, dealing with federally insured, state banks, says:

> In order to prevent discrimination against State-chartered insured banks,... with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank... may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section,... charge on any loan... interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper... **or at the rate allowed by the laws of the State**, territory, or district where the bank is located, whichever may be greater. [Emphasis added.]

Thus one of the preemptive alternatives given insured state banks is to charge "the rate allowed by the laws of the State."

Because state laws, as in Minnesota, provide for different rates for different institutions for different classes of loans, the question arises what is meant by "rate allowed"? The banks contend this phrase means that they may charge interest at the highest rate available to any competing lender under the state law; in other words, that they are entitled to most favored lender status. Plaintiffs argue this meaning is not to be read into the statutory language, particularly when the legislative history of the Act is silent on the most favored lender doctrine.

The banks point out, however, that the "rate allowed" language is the same wording that appears in the 1864 National Bank Act, where the clause has been construed to give national banks most favored lender status, *i.e.*, to give national banks the same interest rate privileges as any competing state institution. For this well-established construction, *see Tiffany v. National Bank of Missouri*, 85 U.S. (18 Wall.) 409, 412 (1873); Office of the Comptroller of the Currency, 2 *Comptroller's Interpretative Rulings: Changes in Text, 1948–77*, §§ 7310, 9510 (1963); 12 C.F.R. § 7.7310(a) (1988); *see also, e.g., Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978); *Fischer v. First National Bank of Omaha*, 548 F. 2d 255 (8th Cir. 1977).

Did Congress, in enacting the Deregulation Act, intend to give federally-insured, state-chartered banks the same favorable status it had given national banks? In a matter of this importance, involving the law of usury and the need for certainty in business transactions, one would expect Congress to have spoken plainly. Instead, inexplicably, the Act uses language inviting uncertainty and disagreement. *See, e.g.*, Arnold and Rohner, The "Most Favored Lender" Doctrine for Federally Insured Financial Institutions — What Are Its Boundaries? 31 Cath. U. L. Rev. 1 (1981); Comment, *Extension of the Most Favored Lender Doctrine Under Federal Usury Law: A Contrary View*, 27 Vill. L. Rev. 1077 (1981–82). Perhaps this confusion is not surprising because usury law, whether federal or state, has become so arcane and impenetrable (as commentators frequently observe) that one yearns to start over with a clean slate. In any event, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration have all issued interpreta-

tive opinions construing the Deregulation Act to give insured state banks most favored lender status. So has the Minnesota Commissioner of Banks (Interpretation, March 5, 1981).

We conclude that the "rate allowed" clause should be construed as granting to federally-insured, state-chartered banks most favored lender status. We are persuaded that by using the same "rate allowed" language in the Deregulation Act that appears in the National Bank Act, Congress intended to give this status to state insured banks.[2] Furthermore, what is clear, both from the Congressional Record and from the Act itself, is Congress' desire to put insured state banks on an equal footing with their national competitors. Because national banks enjoy "most-favored lender" status, insured state banks are placed on an equal footing only if they, too, are afforded the same status.

But in any event, argue plaintiffs, the Deregulation Act does not extend most favored lender treatment to agricultural loans. They observe that the Public Law version of the Act addresses business and agricultural loans under Title V, Part B. *See* 94 Stat. at 164. But the "rate allowed" language is found not in Part B, but in Part C, which addresses "Other Loans." *Id.* at 164-68. Further, it appears that only Part C, and not Part B, was

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[2]Section 85 of the National Bank Act (12 U.S.C. § 85), after providing that national banks may charge "the rate allowed by the laws of the State," or at the floating discount rate, which may be even greater, goes on to say, "except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter."

This "exception clause" does not appear in the Deregulation Act, and plaintiffs argue that its absence means that Congress did not intend to incorporate the most favored lender doctrine into the Deregulation Act. We disagree. From the beginning, the courts have relied on the "rate allowed" clause as the source of most favored lender status for national banks. *See Northway Lanes v. Hackley Union National Bank & Trust Co.*, 464 F.2d 855, 862-63 (6th Cir. 1972) (quoting *Tiffany*). The "except" clause, it seems to us, means that if "a different rate is limited," *i.e.*, if the state law provides a higher rate limited only to state banks, that rate, too, is available to the national bank.

It would seem the "except" clause was omitted from the Deregulation Act because it was not needed. The Deregulation Act's purpose was to put insured state banks on a parity with national banks, and to do this it was unnecessary to say—as the "except" clause in this context would then say—that state banks can charge what state law says they can charge.

directed to be codified at 12 U.S.C. § 1831d. We are not persuaded. Part B, we note, has a 3-year sunset provision. Parts B and C, we think, are not mutually exclusive but more cumulative in effect, and the codified text at § 1831d, which is the same as in the statute at large, makes no distinction between classes of loans but applies to "any" loan. *Cf. In re: Lawson Square, Inc.*, 816 F.2d 1236, 1239 (8th Cir. 1987) (Parts A and C not mutually exclusive).

II

The next issue is what is the highest interest rate under Minnesota Law that the respondent banks with most favored lender status may charge on agricultural loans? We answer 21.75 percent.

A.

Admittedly, the banks may charge the floating 4½ percent over federal discount rate on agricultural loans. Minn. Stat. § 334.011 says so:

> Notwithstanding the provisions of any law to the contrary a person may, in the case of a contract for the loan or forbearance of money... in an amount of less than $100,000 for business or agricultural purposes, charge interest at a rate of not more than 4½ percent in excess of the discount rate on 90 day commercial paper in effect at the Federal Reserve bank....

See also § 48.195 (1986) ("Notwithstanding any law to the contrary," a depository institution may charge not more than 4½ percent over the federal discount rate on "any loan").

Under the most favored lender doctrine, however, an insured state bank (like a national bank) may also charge the higher rate of interest allowed under state law to any competing state-licensed or chartered lending institution for the same specified class of loans. *See* 12 C.F.R. § 7.7310(a) (1988). The competing lending institution ordinarily need not be the same type of lender; it may be "any" lender, such as here an industrial loan and thrift. But

the interest rate sought to be used must be for the same class of loan, here an agricultural loan.

While plaintiffs argue industrial loan and thrifts were intended to make consumer loans, nothing in Chapter 53 limits these lenders to loans for particular purposes, and they would have the right to make agricultural loans. Whether, in fact, they are actually making agricultural loans is not the test; it is enough for the most favored lender doctrine that the lender has the right to make these loans. *See Fischer,* 548 F.2d at 257.

As authority to charge 21.75 percent, the banks cite the fourth sentence of § 53.04, subd. 3a(a), which gives industrial loan and thrifts "[t]the right to extend credit or lend money and to collect and receive charges therefor as provided by chapter 334, **or in lieu thereof** to charge, collect, and receive interest at the rate of 21.75 percent per annum...."(Emphasis added.)

The "in lieu" language is awkward. Observe, however, that the 21.75 percent rate is in lieu of all rates permitted under Chapter 334. Observe also the quoted sentence gives both the right to lend money and the right to charge interest "as provided by chapter 334," but that the "in lieu" clause refers only to the right to charge interest. We construe the sentence to mean that industrial thrifts may make Chapter 334 loans and charge interest as provided in Chapter 334, but in lieu of the interest allowed by Chapter 334 on these loans, 21.75 percent interest may be charged.

This construction appears to conflict, however, with § 334.011 which says that "[n]otwithstanding the provisions of any law to the contrary," a person (*i.e.,* any lender) may charge interest of "not more" than the floating rate on business and agricultural loans.[3] This language may be read one of two ways. Either it means that the floating rate of agricultural loans is the exclusive rate that may be charged on agricultural loans; or it means that

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[3]Prior to 1981, § 334.011 began with the clause "Notwithstanding the provisions of section 334.01 [the general 8 percent rate] or other law to the contrary...." At the 1981 session, 5 days before the 21.75 percent "in lieu thereof" language was added to § 53.04, the "notwithstanding" clause was amended by deleting the reference to § 334.01 to state, "Notwithstanding the provision of any law to the contrary...." Plaintiffs would read into this amendment a legislative intent for § 334.011 to override the 21.75 percent alternative added to § 53.04. The amendment of the "notwithstanding" clause strikes us a simple housekeeping amendment and nothing more.

the floating rate is permitted for agricultural loans even though other provisions of the law provide for contrary rates. The respondent banks urge the second interpretation. We incline towards the second interpretation, but even if the first interpretation is adopted to create a conflict between sections 334.011 and 53.04, it appears that the 21.75 percent rate prevails.

If two statutes are in irreconcilable conflict, the special provision shall prevail over the general, unless the general provision was enacted at a later session and the legislative intent is manifest that the general provision shall prevail. *See* Minn. Stat. § 645.26 (1986). Here, within the context of interest rates for agricultural loans, it appears that § 334.011 is the provision dealing specially with agricultural loans and § 53.04 deals with loans generally. It also appears, however, that § 334.011 was enacted in 1976 and last amended in 1981, while § 53.04, subd. 3a(a) was enacted in 1981 and amended in each of the four succeeding years. *See Dahl v. Lanesboro State Bank*, 399 N.W.2d 621, 623 (Minn. App. 1987). We conclude, therefore, that § 53.04, subd. 3, being later in time and exhibiting a manifest intent to prevail over § 334.011, should be deemed to be controlling. In other words, we hold that the floating rate under § 334.011 is not an exclusive rate for agricultural loans for all lenders under state law, but 21.75 percent is available for agricultural loans made by industrial loan and thrifts and, hence, also to insured state banks with most favored lender status.

B.

One more step remains in our analysis. Respondent banks may use the industrial thrifts' 21.75 percent rate **for the same specified class of loans.** In the cases before us, the class consists of loans for agricultural purposes. But is the class further limited? The class may also be defined by the amount of the loan,[4] and the specific question that arises here is whether the $35,000 loan limit prescribed by the Minnesota Regulated Loan Act is a class determinant. If thrifts cannot make loans of more than $35,000 at 21.75 percent interest, then neither can the banks. The banks are entitled to parity with the most favored lender, not a leg up.

Respondent banks argue there is no $35,000 ceiling for thrifts making a Chapter 53 loan, but if there is, the ceiling defines a class of lender, not a class of loans. The loan ceiling is not in Chapter 53 but is found in § 56.131, subd. 1(a) (1984), a part of the Regulated Loan Act, and provides:

> On any loan in the principal amount of $35,000 or less, a licensee may contract for and receive interest,... not exceeding the equivalent of the greater of...
>
> (1) the total of: [different rates for balances under and over $350]; or
>
> (2) 21.75 percent per year....

If the respondent banks were making loans under Chapter 56, the above-quoted ceiling would, we think, be a class limitation.[5]

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[4] *See* OCC Interpretative Letter No. 178, 5 Consumer Cred. Guide (CCH) Paragraph 97,239 (1981), where the Comptroller says a bank borrowing a small loan rate is bound by the small loan law limitations on the total amount of the loan.

One must distinguish between the amount of the loan which determines the class and a loan amount provision which materially affects determination of the interest rate. *See* Part III, *infra.* An example of the latter instance might be where the amount of an individual loan is affected by the method of computing unpaid balances for open-end credit transactions. Plaintiffs fail to make this distinction, arguing in their briefs that the $35,000 loan limit is a provision "materially" affecting determination of the interest rate. The $35,000 ceiling does not affect the interest rate. The loan amount has nothing to do with how much interest a thrift can charge on a loan, but whether it can make the loan at all.

But the banks' loans were made under Chapter 53. Section 53.04, subd. 3a(a)[6] gives an industrial loan and thrift three alternatives: (1) under the first three sentences, to make loans "under chapter 56"; (2) under the fourth sentence, to makes loans "as provided by chapter 334"; and (3), also under the fourth sentence, to make Chapter 334 loans at 21.75 percent interest. Here, if the loans had been made under the first option, it would appear that the $35,000 ceiling required by the Regulated Loan Act would be a determinant of the class of loans, which is what plaintiffs urge. Respondent banks, however, made their loans under a claim of most favored lender status, and this status entitled the banks, nothing appearing to the contrary, to treat their loans as made under Chapter 53, This being so, the $35,000 loan limit of Chapter 56 is not involved and does not define the class. Rather, these loans are deemed to be Chapter 53 loans, and there is no loan limit in Chapter 53.[7] Consequently, the class of loans involved

[5]The 1985 legislature amended § 56.131, subd. 1(a) (1984), to read: "On any loan in a principal amount not exceeding $35,000 **or ten percent of a corporate licensee's contributed capital and appropriated reserves as defined in section 53.015, if greater,** a licensee may" charge either the stepped-up rate or 21.75 percent. 1985 Minn. Laws 1st Sp. Sess., ch. 1, § 19. After the effective date of the amendment, the $35,000 amount no longer serves to define the class of loans because the alternative loan ceiling, dependent on each lender's capital and reserves, eliminates the flat amount, across-the-board, determinant. The loans involved in these appeals were made prior to the amendment.

[6]Minn. Stat. § 53.04, subd 3a(a) (1984), reads:

> The right to make loans, secured or unsecured, at the rates and on the terms and other conditions permitted licensees under chapter 56. Loans made under the authority of section 56.125 must be in amounts in compliance with section 53.05, clause (7). All other loans made under the authority of chapter 56 must be in amounts in compliance with section 53.05, clause (7), or 56.131, subdivision 1, paragraph (a), whichever is less. The right to extend credit or lend money and to collect and receive charges therefor as provided by chapter 334, or in lieu thereof to charge, collect, and receive interest at the rate of 21.75 percent per annum.

[7]Section 53.05, subd. 7 (1984), prohibits an industrial loan and thrift from "lend[ing] money in excess of ten percent of its contributed capital and appropriated reserves to a person primarily liable." This is not a class determinant. The lending limit varies with each lender depending on that lender's capital and reserves and, therefore, serves only to regulate each individual lender. *Cf.* footnote 5, *supra.*

here, for the purpose of the most favored lender doctrine, is defined only by the type of loan, namely, as loans for agricultural purposes.

III.

Even though the interest rate charged by the respondent banks was permissible, are the loans nevertheless usurious because the banks failed to comply with other regulations applicable to loans made by industrial loan and thrifts?

The "rate allowed" language in the National Bank Act has been construed to mean that the most favored lender doctrine adopts the state's usury laws "only insofar as they severally fix the rate of interest." *Evans v. National Bank of Savannah*, 251 U.S. 108, 111 (1919). The bank is subject, however, to those provisions of state usury law that are "material to the determination of the interest rate." *See* 12 C.F.R. § 7.7310 (1988). While there is some difference of opinion as to the test of materiality, *see Attorney General of Maryland v. The Equitable Trust Co.*, 294 Md. 385, 450 A.2d 1273 (Md. App. 1982), we believe as a general proposition, that a provision is material to a determination of the interest rate if it (1) pertains to the manner in which the numerical rate of interest is calculated, or (2) defines the class of loans in such a way (as by size, type of borrower, or maturity) as to affect the borrowed interest rate. *See* 12 C.F.R. § 7.7310 (1988); *Partain v. First National Bank of Montgomery*, 467 F.2d 167, 173 n. 5 (5th Cir. 1972). Thus, licensing requirements for an industrial loan and thrift are not material to a determination for the 21.75 percent rate and, therefore, banks with most favored lender status need not comply with those requirements when they use the 21.75 percent rate. 12 C.F.R. § 7.7310 (1988). In our appeals, plaintiffs do not claim otherwise but they do claim the respondent banks were required to comply with certain provisions governing loan splitting and the charging of attorney fees.[8] Both

[8] Plaintiffs also claim the $35,000 loan ceiling in § 56.131, subd. 1 (1982), is a provision material to determination of the interest rate. As we have previously noted, this provision, if relevant, is relevant only to a determination of class of loan, not as affecting the interest rate. *See* footnote 4, *supra*.

the trial courts and the court of appeals disagreed, holding these provisions were not material. We, too, find the regulatory provision inapplicable, but we do so without reaching the question of their materiality to the interest rate.

The prohibitions against loan splitting and charging attorney fee in case of default appear in Chapter 56.[9] Apparently, industrial thrifts make mostly "regulated loans" under Chapter 56 and would, of course, be subject ot the regulatory provisions of that chapter on those loans.[10] But, as we have seen (Part II), industrial thrifts may also make Chapter 53 loans, *i.e.*, loans under the third alternative of § 53.04, subd. 3a(a), and there are no prohibitions against loan splitting or charging attorney fees in Chapter 53. While § 56.002 says that industrial thrifts shall comply, except for licensure, with all other provisions of Chapter 56, the section then perversely adds "when contracting for or receiving charges on loans regulated by this chapter." As noted, the loans here were not made under Chapter 56. We need not consider changes in the law made after these loans.[11] It is enough to say that the regula-

[9] Loan splitting under § 56.131, subd. 3 (1984), is defined as dividing a loan into more than one loan "for the purpose or with the result of obtaining a higher rate of charge than would otherwise be permitted by this section." Such a practice would be material to a determination of the interest rate. But even if the section were applicable here, there has been no showing that any loans were split, much less any showing that any split resulted in a higher interest rate than 21.75 percent.

[10] *See* R. Fuller and J. Kost, *Usury, Interest and the Minnesota Business*, Minn. CLE Manual 14 (April 1984). At pages 23-24, the authors list the four kinds of credit that are extended to industrial loan and thrifts under § 53.04.

[11] Secion 53.04, subd. 3a(a), it will be recalled, gave loan and thrifts the right to make loans and charge interest as provided by Chapter 334 and, "in lieu thereof" to charge 21.75 percent interest a year. To this loan-making right the 1985 legislature added "... including the right to contract for, charge, and collect all other charges including discount points, fees, late payment charges, and insurance premiums on the loans to the same extent permitted on loans made under the authority of chapter 56, regardless of the amount of the loan." 1985 Minn. Laws 1st Sp. Sess., ch. 1, § 12, effective June 25, 1985. See also the amendment to § 53.04 adding subdivision 4a requiring documentation of loans made pursuant to the section. 1985 Minn. Laws 1st Sp. Sess., ch. 13, § 188, effective Jan. 1, 1986.

Because of the complexity involved, it is no wonder the 1985 legislature amended § 53.04 to require thrifts to disclose on their notes "the provisions of Minnesota Statutes under which the rate of interest and other charges are authorized." 1985 Minn. Laws 1st Sp. Sess., ch. 13, § 188.

tory provisions of Chapter 56 do not apply to the loans by respondent banks.

We hold, therefore, that the loan splitting and attorney fees provisions of Chapter 56 do not apply to the loans involved in these cases.

IV.

The *Bandas* appeal raises two additional issues. The respondent bank made an agricultural loan to Joseph and Marjorie Bandas in the amount of $36,000 represented by a note dated November 30, 1984, for 2 weeks, with a stated interest rate of 14.25 percent. Accompanying the loan was a truth-in-lending statement listing an "origination fee" of $540 and an actual interest rate of 51.52 percent.

Two issues are presented: (1) Does the "origination fee" constitute interest so as to make the loan's annualized interest rate 51.52 percent, a clearly usurious rate? (2) If so, is the usurious transaction a violation of the Racketeer Influenced and Corrupt Organization Act (RICO)? The trial court answered the first question no and did not reach the second question. The court of appeals reversed on the first issue, finding a usurious interest rate, but, on the second issue, held that RICO does not apply because one transaction does not constitute a "pattern" of unlawful conduct. *Bandas v. Citizens State Bank of Silver Lake*, 412 N.W.2d 818, 821 (Minn. App. 1987).

A.

The court of appeals relied on a Chapter 56 definition of interest, citing § 56.001, subd. 5 (1986), which broadly defines interest as "all charges payable directly or indirectly by a borrower... as an incident to the loan, however denominated...."[12] Under this

[12] Section 56.001, subd. 5 goes on, however, to say that interest "shall not include permissible default or deferment charges, lawful fees for any security taken, insurance charges or premiums, court costs, or other charges specifically authorized by law." *See also* § 56.131, subd. 2 (1986), which places limitations on additional charges that may be made.

definition, according to the court of appeals, the "origination fee" was "incident ot the loan" and, therefore, includable in the interest rate calculation.

The appellate panel apparently thought the Chapter 56 definition of interest governed because § 53.04, subd. 3a(a) (1986) provides that the Chapter 53 lender may "collect all other charges including discount points, **fees**, late payment charges, and insurance premiums on the loans **to the same extent permitted on loans made under the authority of chapter 56**...." (Emphasis added.) But this quoted language was a 1985 amendment to § 53.04, subd. 31. It was not in the statute at the time the Bandas loan was made in November 1984. Consequently, it appears that the Chapter 56 definition of interest does not govern.

In the absence of any applicalbe statutory provision defining what should be included as interest for a Chapter 53 loan made in 1984, we believe the common law applies. This court has long followed the general rule that reasonable expenses incurred by the lender in preparing a loan may be charged to the borrower without making the loan usurious. *See, e.g., Kroll v. Windsor,* 259 Minn. 200, 201, 107 N.W.2d 53, 55 (1960); *Hatcher v. Union Trust Co. of Maryland,* 174 Minn. 241, 244, 219 N.W. 76, 77-78 (1928); *Lassman v. Jacobson,* 125 Minn. 218. 219-20, 146 N.W. 350, 351 (1914). Here the $540 origination fee (the equivalent of 1.5 points) would not be considered as interest if it was compensation for expenses incurred in preparing the loan and its security. On the other hand, if the fee is not related to any separate expenses but is compensation for the use of the money loaned, it would be considered as interest. On motions for summary judgment, the trial court found that the origination fee was for services rendered, but there is nothing in the record to support this finding other than an affidavit of a bank officer simply making that assertion. We have, therefore, an unresolved fact issue which must be remanded to the trial court for further proceedings.

B.

If the Bandas loan should be found to be usurious on remand, would that transaction be a RICO violation? We decline to rule

definitively because of an unresolved jurisdictional question.

The court of appeals held that a single unlawful debt, *i.e.*, a loan twice the lawful interest rate, did not constitute a pattern of racketeering activity, as a "pattern" requires at least two unlawful acts. *Bandas*, at 821. We doubt the applicability of this reasoning. Under RICO the unlawful conduct is "through a pattern of racketeering activity **or** collection fo unlawful debt." 18 U.S.C. § 1962(c) (1982) (emphasis added). In other words, it appears that a pattern of racketeering activity and the collection of unlawful debt are separate RICO violations. The Act defines "unlawful debt," and the definition requires, among other things, the usurious debt to have been incurred in connection with "the business of lending money" at a usurious rate "where the usurious rate is at least twice the enforceable rate." *Id.* § 1961(6); *Durante Bros. and Sons, Inc. v. Flushing National Bank*, 755 F.2d 239, 249 (2d Cir. 1985), *cert. denied*, 473 U.S. 906. The Act seems to be directed at loan sharking. In any event, there is no allegation or showing that the Citizens State Bank was engaged in the business of making usurious loans at double the lawful rate. If we were to rule, we would rule there is no RICO violation because there is no "collection of unlawful debt."

There is, however, a serious, threshold jurisdictional issue not raised by the parties. For a RICO violation, a person injured "may sue therefor in any appropriate United States district court." 18 U.S.C. § 1964(c) (1982). There is a sharp split of authority, in both state and federal courts, on whether federal courts have exclusive jurisdiction over RICO claims or whether state courts have concurrent jurisdiction. For exclusive jurisdiction, *see, e.g., Main Rusk Associates v. Interior Space Constructors, Inc.*, 699 S.W.2d 305 (Tex. App. 1985); and *County of Cook v. Midcon Corp.*, 574 F. Supp. 902 (N.D. Ill. 1983), *affirmed* 773 F.2d 892. For concurrent jurisdiction, *see, e.g., Rice v. Janovich*, 109 Wash.2d 48, 742 P.2d 1230 (1987), and *Lou v. Belzberg*, 834 F.2d 730 (9th Cir. 1987), *cert. denied* 108 S.Ct. 1302. We have serious reservations about our courts assuming concurrent RICO jurisdiction. The parties have not, however, raised the issue, much less briefed it, and without the question receiving the considered attention it deserves, we decline to decide the issue at this time.

Affirmed in all cases, except, in *Bandas*, the case is remanded for further proceedings as indicated.

POPOVICH, Justice, took no part in the consideration or decision of this case.

WAHL, Justice, concurring in part, dissenting in part.

Though I concur, for the most part, with the majority opinion, I must respectfully dissent from that portion which holds that state banks, having most favored lender status, may charge up to 21.75 percent a year on their agricultural loans made between 1983 and 1985. The legislature made manifest its intent, in Minn. Stat. § 334.011, subd. 1, that the maximum interest rate to be established for an agricultural loan was not more than 4½ percent in excess of the federal discount rate, "[n]othwithstanding the provisions of any law to the contrary." "Notwithstanding the provisions of any law to the contrary"—these are strong words, words that were unrepealed and unmodified when the legislature extended to industrial loan and thrift companies the right "to collect and receive charges [for the credit extended or money loaned therefor] as provided by chapter 334, or in lieu thereof to charge, collect and receive interest at the rate of 21.75 percent per annum." Minn. Stat. § 53.04, subd. 3a(a).

The foremost rule of construction given us by the legislature regarding the resolution of apparently conflicting provisions in the Minnesota Statutes is that "[w]hen a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both." Minn. Stat. § 645.26, subd. 1 (1986). We must first attempt to reconcile the two statutes, giving effect to both, before proceeding to determine which provision prevails. Reconciliation can be effected in this case by construing the provision of § 53.04, subd. a(a) that industrial loan and thrift companies may make loans with interest up to certain rates ceilings "as provided by chapter 334, or in lieu thereof... at the rate of 21.75 percent" to mean that industrial loan and thrift companies may generally

charge up to 21.75 percent interest, unless chapter 334 specifies a different rate on particular types of loans being made.

This construction would avoid conflict because only one provision would apply to a particular loan being made. The bank's proposed construction of section 53.04, on the other hand, would greatly circumscribe the ambit of section 334.011 because no federal bank or federally insured state bank would be governed by the interest rate ceiling specified in either chapter 334 or in chapter 48. Since virtually every bank and savings and loan organization in Minnesota is federally insured, only a handful of private lenders would be governed by the interest rate in section 334.011. It is unlikely the legislature intended section 53.04 to so circumscribe the reach of section 334.011's prescription of an interest rate ceiling of agricultural and business loans. It is more reasonable to construe section 53.04 to require compliance with the rate ceiling in section 334.011 on agricultural loans and to set a 21.75 percent rate ceiling for other loans. The highest rate state banks, having most favored lender status, could charge on their agricultural loans would be that prescribed by section 334.011, not more than 4½ percent in excess of the federal discount rate. I would so hold.

Nos. C4-87-283, C5-87-339, C6-87-379, C7-87-1184

State of Minnesota

In Supreme Court

James VanderWeyst, et al., petitioners,
Appellants,

vs. (C4-87-283)

First State Bank of Benson,
Respondent.

Patrick J. Walsh, et al., petitioners,
Appellants,

vs. (C5-87-339)

State Bank of Pennock,
Respondent.

and

Charles Heimark, Jr., petitioner,
Appellant,

vs. (C6-87-379)

Norwest Bank Montevideo,
Respondent.

Joseph J. Bandas, et al., petitioners,
Appellants,

vs. (C7-87-1184)

Citizens State Bank of Silver Lake, et al., petitioners,
Respondents.

ORDER

This court, having considered en banc the petition for rehear-

ing in the above entitled case,

IT IS HEREBY ORDERED:

1. The second sentence of footnote 3 on page 8 of the slip opinion filed June 3, 1988, is hereby amended to read as follows:

> At the 1981 session, 5 days after the 21.75 percent "in lieu thereof" language was added to § 53.04, the "notwithstanding" clause was amended by deleting the reference to § 334.01 to state, "Notwithstanding the provisions of any law to the contrary***."

2. The petition for rehearing is otherwise denied and the stay vacated.

3. No award of attorney fees pursuant to Minn. R. Civ. App. P. 140.03 is allowed.

4. The taxation of costs and disbursements by respondent Citizens State Bank of Silver Lake in Case No. C7-87-1184, *Bandas v. Citizens State Bank of Silver Lake*, is hereby denied.

Dated: July 5, 1988.

BY THE COURT:

John E. Simonett
Associate Justice

POPOVICH, Justice, took no part in the consideration or decision of this case.

TITLE V—STATE USURY LAWS

Part A—Mortgage Usury Laws

Mortgages

Sec. 501. (a)(1) The provisions of the constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is—

(A) secured by a first lien on residential real property, by a first lien on stock in a residential cooperative housing corporation where the loan, mortgage, or advance is used to finance the acquisition of such stock, or by a first lien on a residential manufactured home;

(B) made after March 31, 1980; and

(c) described in section 527(b) of the National Housing Act (12 U.S.C. 1735f-5(b)), except that for the purpose of this section—

(i) the limitation described in section 527(b)(1) of such Act that the property must be designed principally for the occupancy of from one to four families shall not apply;

(ii) the requirement contained in section 527(b)(1) of such Act that the loan be secured by residential real property shall not apply to a loan secured by stock in a residential cooperative housing corporation or to a loan or credit sale secured by a first lien on a residential manufactured home;

(iii) the term "federally related mortgage loan" in section 527(b) of such Act shall include a credit sale which is secured by a first lien on a residential manufactured home and which otherwise meets the definitional requirements of section 527(b) of such Act, as those requirements are modified by this section;

(iv) the term "residential loans" in section 527(b)(2)(D) of such Act shall also include loans or credit sales secured by a first lien on a residential manufactured home;

(v) the requirement contained in section 527(b)(2)(D) of

such Act that a creditor make or invest in loans aggregating more than $1,000,000 per year shall not apply to a creditor sellling residential manufactured homes financed by loans or credit sales secured by first liens on residential manufactured homes if the creditor has an arrangement to sell such loans or credit sales in whole or in part, or if such loans or credit sales are sold in whole or in part to a lender, institution, or creditor described in section 527(b) of such Act or in this section or a creditor, as defined in section 103(f) of the Truth in Lending Act, as such section was in effect on the day preceding the date of enactment of this title, if such creditor makes or invests in residential real estate loans or loans or credit sales secured by first liens on residential manufactured homes aggregating more than $1,000,000 per year; and

(vi) the term "lender" in section 527(b)(2)(A) of such Act shall also be deemed to include any lender approved by the Secretary of Housing and Urban Development for participtaion in any mortgage insurance program under the National Housing Act.

(2)(A) The provisions of the constitution or law of any State expressly limiting the rate or amount of interest which may be charged, taken, received, or reserved shall not apply to any deposit or account held by, or other obligation of a depository institution. For purposes of this paragraph, the term "depository institution" means —

(i) any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iii) any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(iv) any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) any member as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422); and

(vi) any insured institution as defined in section 408 of the National Housing Act (12 U.S.C. 1730a).

(b) This paragraph shall not apply to any such deposit,

account, or obligation which is payable only at an office of an insured bank, as defined in section 3 of the Federal Deposit Insurance Act, located in the Commonwealth of Puerto Rico.

(b)(1) Except as provided in paragraphs (2) and (3), the provisions of subsection (a)(1) shall apply to any loan, mortgage, credit sale, or advance made in any State on or after April 1, 1980.

(2) Except as provided in paragraph (3), the provisions of subsection (a)(1) shall not apply to any loan, mortgage, credit sale, or advance made in any State after the date (on or after April 1, 1980, and before April 1, 1983) on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of subsection (a)(1) to apply with respect to loans, mortgages, credit sales, and advances made in such State.

(3) In any case in which a State takes an action described in paragraph (2), the provisions of subsection (a)(1) shall contintue to apply to—

(A) any loan, mortgage, credit sale, or advance which is made after the date such action was taken pursuant to a commitment therefor which was entered during the period beginning on April 1, 1980, and ending on the date on which such State takes such action; and

(B) any loan, mortgages, or advance which is a rollover of a loan, mortgage, or advance, as described in regulations of the Federal Home Loan Bank Board, which was made or committed to be made during the period beginning on April 1, 1980, and ending on the date on which such State takes any action described in paragraph (2).

(4) At any time after the date of enactment of this Act, any State may adopt a provision of law placing limitations on discount points or such other charges on any loan, mortgage, credit sale, or advance described in subsection (a)(1).

(c) The provisions of subsection (a)(1) shall not apply to a loan, mortgage, credit sale, or advance which is secured by a first lien on residential manufactured home unless the terms and conditions relating to such loan, mortgage, credit sale, or advance comply with consumer protection provisions specified in regulations pres-

cribed by the Federal Home Loan Bank Board. Such regulations shall—

(1) include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges, and deferral fees;

(2) require a 30-day notice prior to instituting any action leading to repossession or foreclosure (except in the case of abandonment or other extreme circumstances);

(3) require that upon prepayment in full, the debtor shall be entitled to a refund of the unearned portion of the precomputed finance charge in an amount not less than the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1; and

(4) include such other provisions as the Federal Home Loan Bank Board may prescribe after finding that additional protections are required.

(d) The provisions of subsection (c) shall not apply to a loan, mortgage, credit sale, or advance secured by a first lien on a residential manufactured home until regulations required to be issued pursuant to paragraphs (1), (2), and (3) of subsection (c) take effect, except that the provisions of subsection (c) shall apply in the case of such a loan, mortgage, credit sale, or advance made prior to the date on which such regulations take effect if the loan, mortgage, credit sale, or advance includes a precomputed finance charge and does not provide that, upon prepayment in full, the refund of the unearned portion of the precomputed finance charge is an amount not less the amount which would be calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than $1. The Federal Home Loan Bank Board shall issue regulations pursuant to the provisions of paragraphs (1), (2), and (3) of subsection (c) that shall take effect prospectively not less than 30 days after publication in the Federal Register and not later than 120 days from the date of enactment of this Act.

(e) For the purpose of this section—

(1) a "prepayment" occurs upon—

(A) the refinancing or consolidation of the indebtedness;

(B) the actual prepayment of the indebtedness by the consumer whether voluntarily or following acceleration of the payment obligation by the creditor; or

(C) the entry of a judgment for the indebtedness in favor of the creditor;

(2) the term "actuarial method" means the method of allocating payments made on a debt between the outstanding balance of the obilgation and the precomputed finance charge pursuant to which a payment is applied first to the accrued precomputed finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation;

(3) the term "precomputed finance charge" means interest or a time price differential within the meaning of sections 106(a) (1) and (2) of the Truth in Lending Act (15 U.S.C. 1605(a) (1) and (2)) as computed by an add-on or discount method; and

(4) the term "residential manufactured home" means a mobile home as defined in section 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974 which is used as a residence.

(f) The Federal Home Loan Bank Board is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(g) This section takes effect on April 1, 1980.

Part B—Business and Agricultural Loans

Business and Agricultural Loans

Sec. 511. (a) If the applicable rate prescribed in this section exceeds the rate a person would be permitted to charge in the absence of this section, such person may in the case of a business or agricultural loan in the amount of $25,000 or more, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate, including any surcharge

thereon, on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the person is located.

(b) If the rate prescribed in subsection (a) exceeds the rate such person would be permitted to charge in the absence of this section, and such State imposed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the person taking, receiving, reserving, or charging such interest.

Effective Date of Part B

Sec. 512. The provisions of this part shall apply only with respect to business or agricultural loans in amounts of $25,000 or more made in any State during the period beginning on April 1, 1980, and ending on the earlier of—

(1) April 1, 1983; or

(2) the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such state have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this part to apply with respect to loans made in such State,

except that such provisions shall apply to any loan made on or after such earlier date pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to such earlier date.

Part C—Other Loans

Insured Banks

Sec. 521. The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end thereof the following new section:

"Sec. 27. (a) In order to prevent discrimination against State-chartered insured banks, including insured savings banks and insured mutual savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discoutn made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located whichever may be greater.

"(b) If the rate prescribed in subsection (a) exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.".

Insured Savings and Loan Associations

Sec. 522. Title IV of the National Housing Act (12 U.S.C. 1724 et seq.) is amended by adding at the end thereof the following new section:

"Sec. 414. (a) If the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section, such institution may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such institution is located or at the rate allowed by the laws of the State, territory, or district where such institution is located, whichever may be gretater.

"(b) If the rate prescribed in subsection (a) exceeds the rate such institution would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than that prescribed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the institution taking or receiving such interest.".

Insured Credit Unions

Sec. 523. Section 205 of the Federal Credit Union Act (12 U.S.C. 1785) is amended by adding at the end thereof the following new subsection:

"(g)(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may,

notwithstanding any State constituition or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

"(2) If the rate prescribed in paragraph (1) exceeds the rate such credit union would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving, or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the credit union taking or receiving such interest.".

Small Business Investment Companies

Sec. 524. Section 308 of the Small Business Investment Act of 1958 (15 U.S.C. 687) is amended by adding at the end thereof the following new subsection:

"(i)(1) The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small business concerns.

"(2) In the case of a business loan, the small business investment company making such loan may charge interest on such loan at a rate which does not exceed the lowest of the rates described in subparagraphs (A), (B), and (C).

"(A) The rate described in this subparagraph is the maximum rate prescribed by regulation by the Small Business Administration for loans made by any small business investment company (determined without regard to any State rate incorporated by such regulation).

"(B) The rate described in this subparagraph is the maximum rate authorized by an applicable State law or constitutional provision which is not preempted for purposes of this subsection.

"(C)(i) The rate described in this subparagraph is the higher of the Federal Reserve rate or the maximum rate authorized by applicable State law or provision (determined without regard to the preemption of such State law or constitutional provision).

"(ii) For purposes of clause (i), the term 'Federal Reserve rate' means the rate equal to the sum of 1 percentage point plus the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which the principal office of the small business investment company is located.

"(iii) The rate described in this subparagraph shall not apply to loans made in a State if there is no maximum rate authorized by applicable State law or constitutional provision for such loans or there is a maximum rate authorized by an applicable State law or constitutional provision which is not preempted for purposes of this subsection.

"(3) A State law or constitutional provision shall be preempted for purposes of paragraph (2)(B) with respect to any loan if such loan is made before the date, on of after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this subsection to apply with respect to loans made in such State, except that such State law or constitutional or other provision shall be preempted in the case of a loan made, on or after the date on which such law is adopted or such certification is made, pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

"(4)(A) If the maximum rate of interest authorized under paragraph (2) on any loan made by a small business investment company exceeds the rate which would be authorized by applicable State law if such State law were not preempted for pur-

poses of this subsection, the charging of interest at any rate in excess of the rate authorized by paragraph (2) shall be deemed a forfeiture of the greater of (i) all interest which the loan carries with it, or (ii) all interest which has been agreed to be paid thereon.

"(B) In the case of any loan with respect to which there is a forfeiture of interest under subparagraph (A), the person who paid the interest may recover from a small business investment company making such loan an amount equal to twice the amount of the interest paid on such loan. Such interest may be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest.".

Effective Date

Sec. 525. The amendments made by sections 521 through 523 of this title shall apply only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State hve voted in favor of any provision, constitutional or otherwise, which state explicity and by its terms that such State does not want the amendments made by such sections to apply with respect to loans made in such State, except that such amendments shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made.

Severability

Sec. 526. If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby.

Definintion

Sec. 527. For purposes of this title, the term "State" includes the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust of Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, except as provided in section 501 (a)(2)(B).

Effect on Other Law

Sec. 528. In any case in which one or more provisions of, or amendments made by, this title, section 529 of the National Housing Act, or any other provision of law, including section 5197 of the Revised Statutes (12 U.S.C. 85), apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate.

Repeal of Existing Law

Sec. 529. Effective at the close of March 31, 1980, Public Law 96-104, section 105(a)(2) of Public Law 96-161, and the amendments made by and the provisions of title II of Public Law 96-161 are hereby repealed, except that the provisions of such Public Law, the provisions of such section, the amendmants made by such title, and the provisions of such title shall contintue to apply to any loan made, any deposit made, or any obligation issued in any State during any periods when those provisions of amendments were in effect in such State.

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	National Bank Act of 1864 (12 U.S.C. Sec. 85, as amended)	*Tiffany v. Nat'l. Bank of Missouri*, 85 U.S. [18 Wall. 409 (1873)]
ALLOWANCE CLAUSE	An association may . . . charge on any loan . . . interest at the rate allowed by the alws of the State . . . where the bank is located, or at a rate of 1 per centum in excess of the discounted rate on ninety-day commercial paper . . . whichever may be greater, and no more.	Held: that "allowance clause" should be construed broadly to permit National Banks to charge the rate allowed to lenders generally (*e.g.*, Minn. Stat. Sec. 334.01).
EXCEPT CLAUSE	[E]xcept that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this title.	Held: that "except clause" enabled National Banks to utilize a higher rate limitation, if state banks of issue were allowed a higher rate than that for lenders generally. Interpreted "different" as meaning "higher," hence the derivation of the MFLD.

Comptroller of Currency: Interpretation of the Most Favored Lender Doctrine [12 C.F.R. 7.7310(a)]	*Marquette Nat'l. Bank of Minneapolis v. First Omaha Service Corp.* 439 U.S. 299 (1978)	**Depository Institution Deregulation and Monetary Control Act of 1980 Title V, Part C** (12 U.S.C. 1831d)
	Held: that "allowance clause" permits exportation of an association's domicile state's usury laws across state boundaries.	[Any federally] insured . . . State bank . . . may charge on any loan 1 per centum in excess of the discount rate on ninety-day commercial paper . . . or at the rate allowed by the laws of the State . . . where the bank in located, whichever may be greater.
A national bank may charge interest at the maximun rate permitted by State law to any competing State ["banking" (1984)] ["lending"(1960)] [chartered or licensed lending (1966)] institution ...	Held: that "except clause" has been interpreted as an enabling clause giving rise to the MFLD at least since *Tiffany*. The court expressly rejected the view that the "except clause" limited the Omaha lender's ability to export the interest rate. 439 U.S. 308, n. 19	No mention of "except clause" or MFLD [could have added language as follows "the highest rate allowed to any competing lender under the laws of the state where (insured institution) is located].